

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5534 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOLI SORSINGHBHAI SHARKERBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

MR KT DAVE, AGP for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/03/98

ORAL JUDGMENT

#. The petitioner, by this Special Civil Application, challenges the order of the Deputy Collector, Chhota Udepur, dated 30th October 1984 passed under Section 9 of the Bombay Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "Act 1947"), and the order of the Deputy Secretary (Appeals), Revenue

Department, Government of Gujarat at Ahmedabad, dated 10th June 1986, confirming the aforesaid order of the Deputy Collector.

#. The facts of the case are that the petitioner is admittedly holding the land of Survey No.9/3 situate in the Sim of Village Ambadi. This land, as per the case of the petitioner, is contiguous to the land bearing Survey No.394 situate in Sim of Village Baravad. The land of Survey No.394 belonged to respondent No.2. The respondent No.2 sold his land of Survey No.394 to the petitioner and that transaction of sale is made under a registered Sale Deed dated 23rd June 1980. In the Sale Deed aforesaid, there is a recital that, "...on the north of the Survey No.394 the field of the petitioner's Survey No.9/3 is situated...". Pursuant to the provisions of Section 135C of the Bombay Land Revenue Code, 1948, necessary correction in the land revenue record has been made and the name of the petitioner was entered as holder of the land of Survey No.394 vide Entry No.412. This entry in the revenue record has been made on the strength of the registered Sale Deed which has been executed by respondent No.2 in favour of the petitioner.

#. The Deputy Collector, Chhota Udepur, initiated proceedings under Section 7 of the Act 1947. Under its order dated 30th October 1984, it has been held that the Sale Deed executed by respondent No.2 in favour of the petitioner of the land bearing Survey No.394 is invalid under Section 9(1) of the Act, 1947. Under Section 9(2) of the Act 1947, the said authority imposed a fine on the respondent No.2 of 50/-. Further, under Section 9(3) of the Act 1947, the said authority has ordered that the petitioner be summarily evicted from the land bearing Survey No.394 and the possession thereof be restored to respondent No.2. The petitioner, being aggrieved of the order aforesaid of the Deputy Collector, filed revision application before the respondent No.1 which came to be dismissed on 10th June 1986. Hence this Special Civil Application before this Court.

#. The learned counsel for the petitioner contended that the Deputy Collector, before declaring the Sale Deed to be invalid and inoperative, has not issued notice to the petitioner or the respondent No.2. Similarly, the notice has not been issued to the petitioner before ordering his summarily eviction from the land in dispute. Second contention has been raised that though the land of Survey No.394 was a fragment, sale thereof was not prohibited under the provisions of the Act, 1947. The petitioner was having his land contiguous to the land in dispute.

Such sale of fragment is protected under the Act 1947.

#. On the other hand, the learned counsel for respondent No.1 supported the orders passed by the authorities below.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

#. On the record of the Special Civil Application, the petitioner has produced a traced map of the land in dispute as well as of Survey No.9/3. From the said traced map, I find that the disputed land of Survey No.394 is contiguous to the land of the petitioner of Survey No.9/3. From the perusal of the order of revisional authority, I find that the said authority has not recorded finding that the lands of Survey Nos.9/3 and 394 are not contiguous. What the revisional authority has held is that the lands of Survey Nos.9/3 and 394 are of different villages. Even if the two lands are situated in two different villages, I fail to see how they cannot be contiguous lands. The learned counsel for the respondent No.1 is unable to cite any provision from the Act, 1947, or any Resolution or Circular of the Government or any decision of this Court or the Hon'ble Supreme Court, that if the lands are situate in two different villages, then though they may be contiguous lands, they will not be considered to be contiguous lands for the purpose of provisions of the Act, 1947. The authorities below have not considered the substance of the matter, and only taking a subjective approach, the matter has been decided. Otherwise also, the respondent No.2 has not, at any point of time, raised objection against the sale and he has also not, at any stage, prayed for restoration of his land, to the respondent No.1. Further, the petitioner purchased this land in the year 1980 and for all these years, he is in possession thereof as this Court has protected him by grant of interim order.

#. Taking into consideration the totality of the facts of this case, the order of the authorities below cannot be allowed to stand. In the result, this Special Civil Application succeeds and the same is allowed and the orders dated 30.10.84 of the Deputy Collector, Chhota Udepur, annexure 'A' to the Special Civil Application, and that of the Deputy Secretary (Appeals), Revenue Department, Government of Gujarat, dated 10.6.86, annexure 'B' to the Special Civil Application, are quashed and set aside. Rule is made absolute. No order as to costs.

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(sunil)